

Internal Revenue Service
memorandum

CC:TL-N-2159-88

Br2:DCFegan

date: FEB 23 1988

to: District Counsel, St. Paul CC:STP
Attn: John C. Schmitt diel

from: Director, Tax Litigation Division CC:TL

subject: [REDACTED]

Taxable Periods: [REDACTED] and [REDACTED]
Statute of Limitations: [REDACTED]

This is in reply to your memorandum of November 24, 1987, requesting technical advice concerning the above-named taxpayer.

ISSUE

Whether consents extending the statute of limitations for a corporation that filed Forms 1120S must contain the proviso described in I.R.C. § 6229(b)(2) in order to extend the statute of limitations on assessments against the corporation itself.

CONCLUSION

The proviso required by section 6229(b)(2) is necessary to extend the statute for all subchapter S items, not just those items that will pass through to a shareholder.

FACTS

[REDACTED] filed a subchapter S election for years prior to [REDACTED]. However, in [REDACTED] the corporation acquired stock in another corporation, thereby terminating its subchapter S election pursuant to I.R.C. § 1372(e)(3).^{1/} The corporation continued to file Forms 1120S.

A revenue agent requested that [REDACTED] and its shareholders execute Forms 872-A to extend the statute of limitations on assessment against the corporation for its [REDACTED] and [REDACTED] calendar years. Those forms were executed in the usual

^{1/} This reference is to the Internal Revenue Code as in effect during 1981. All other Code references are to the Internal Revenue Code as in effect in 1983 and 1984 and include the changes brought about by TEFRA and the Subchapter S Revision Act of 1982.

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manner without a special proviso that the extension applied to tax attributable to subchapter S items. The only adjustment proposed is to tax the corporation as a subchapter C corporation; no additional tax would be imposed on the shareholders.

You ask (1) whether the executed Forms 872-A extend the assessment periods; (2) whether our answer varies depending upon whether [REDACTED]'s subchapter S status was terminated, and (3) whether the proviso required by section 6229(b)(2) is required for all assessments against the corporation or is required only for such assessments flowing through to shareholders.

DISCUSSION

Sections 6221 through 6233 of the Internal Revenue Code codified those provisions of the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA), Pub. L. No. 97-248, § 402(a), that establish unified administrative and judicial proceedings for partnership items. Those proceedings now are being conducted at the partnership level, rather than at the partner level.

The Subchapter S Revision Act of 1982, Pub. L. No. 97-640, extends the TEFRA rules to subchapter S corporations for taxable years beginning after 1982. Code sections 6241-6245 accomplish this result. Section 6244 specifically provides the TEFRA rules for assessing deficiencies with respect to partnership items will apply to subchapter S items, unless modified by regulations.

Section 6229(a) establishes a three-year period for assessing partnership (or affected) items under these new procedures. The three years runs from the date the partnership return was filed or due, whichever is later. Pursuant to section 6229(b)(1), the assessment period may be extended with respect to a partner by agreement with that partner or with respect to all partners by agreement with the tax matters partner or other persons authorized in writing.^{2/} However, where the assessment period for partnership items is to be extended by agreement, section 6229(b)(2) requires that agreement to expressly provide that it applies to tax attributable to partnership items.

^{2/} See Temp. Reg. § 301.6229(b)-1T concerning authorizations for persons other than the tax matters partner to extend the assessment period for all partners. It is unclear whether the subchapter S regulations will adopt the same procedure. Therefore, to be cautious, the consent should be signed by the tax matters person or all shareholders.

Under section 6231(a)(3) "partnership items" are those items more appropriately determined at the partnership level than at the partner level as provided by regulations. The temporary regulations refining this definition in a subchapter S context give as examples of "subchapter S items," "items of income...of the corporation" and "taxes imposed at the corporate level". Temp. Reg. § 301.6245-1T(a)

Section 6233 provides these new rules and procedures apply to all entities filing partnership or subchapter S returns even if it is later determined that the entity is not a partnership or S corporation for such year. Temp. Reg § 301.6233-1T further specifies the TEFRA rules apply "with respect to any taxable year of an entity for which such entity files a return as an S corporation as well as to such entity's items for that taxable year...."

In summary, the TEFRA rules provide procedures for entity level proceedings regarding partnership and subchapter S items, corporate level taxes are subchapter S items, and any agreement extending the assessment period for subchapter S items must contain the proviso specified by section 6229(b)(2). These rules apply to any organization filing a partnership or subchapter S return.

Because [REDACTED] filed subchapter S returns for its [REDACTED] and [REDACTED] taxable years, any Forms 872-A should contain section 6229(b)(2) provisos to extend the statutes of limitations for assessments against the corporation. As the Forms 872-A on file contain no such proviso, they do not extend the statutes of limitations for making assessments.

Addressing your specific questions, we believe (1) the Forms 872-A did not extend the assessment periods, (2) the Forms 872-A would not have extended the assessment periods regardless of whether [REDACTED] was or was not a subchapter S corporation, and (3) the proviso required by section 6229(b)(2) is required for all corporate adjustments regarding [REDACTED].

Assessments against the corporation for [REDACTED] are barred by the statute of limitations specified in section 6229(a). A new consent extending the assessment period for [REDACTED], containing the section 6229(b)(2) proviso and otherwise conforming with the TEFRA rules, should be secured promptly.

In this regard, we suggest you retain the existing consents extending the statutes of limitations for [REDACTED] and [REDACTED]. The recent Tax Court case Blanco Investments & Land, Ltd. v. Commissioner, 89 T.C. No. 82 (Dec. 10, 1987), holds subchapter S corporations with only one shareholder are subject to an exception to the TEFRA rules. See section 6231(a)(1)(B). The opinion raises the possibility that all subchapter S corporations with 10 or fewer shareholders^{3/} could also be subject to such an exception (although our position has been otherwise for taxable years the return for which is due on or before January 29, 1987. Temp. Regs. § 301.6241-1T(e)(2)). Since this opinion casts doubts on whether [REDACTED] is subject to the TEFRA rules, we suggest that the existing extensions be retained as further protection for the Service. This office has decided not to appeal the Blanco decision and shortly we expect to issue a Litigation Guideline Memorandum more fully discussing the implications and problems posed by the Blanco case.

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By:



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^{3/} It is our understanding that [REDACTED] has [REDACTED] shareholders.